

Applicant: Robert Lindsay
Serial No.: 10/578,694
Docket No.: 1421-171 PCT/US
Page 18

Amendments to the Drawings:

The attached sheets of drawings includes changes to Figures 1 and 2. These sheets, which includes Figures 1 and 2 replaces the original sheets including Figures 1 and 2.

Attachment: Replacement Sheets

Annotated Sheets Showing Changes

Applicant: Robert Lindsay
Serial No.: 10/578,694
Docket No.: 1421-171 PCT/US
Page 19

REMARKS

The application has been amended. The specification has been amended to correct a typographical error and include element numbers. The drawings have been amended as described below. Claims 1, 40, 43, 46, 48, 49 and 57 have been amended. Support for these amendments to the claims can be found in the specification, particularly with respect to paragraphs [0043], [0050]. No new material has been introduced. Entry of this amendment and reconsideration is respectfully requested.

The drawings are objected to under 37 C.F.R. §1.83(a) because they fail to identify the pre-cut band as described in claims 34-37. With respect to claims 34-37, submitted herewith are replacement drawing sheets for Figures 1 and 2. In each of these Figures, a reference numeral has been added to clearly indicate the pre-cut band. Moreover, the specification has been accordingly amended at paragraph [0025] of the present patent application publication to refer to the added reference numerals. The present invention clearly describes the pre-cut band. Thus, the pre-cut band is clearly disclosed in the specification and shown in the drawings. The addition of the reference numerals to the specification and drawings is not believed to constitute new matter. Accordingly, entry of the amendments to the specification and the replacement drawings is respectfully requested.

Applicant: Robert Lindsay
Serial No.: 10/578,694
Docket No.: 1421-171 PCT/US
Page 20

Claims 40-58 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, claim 40 is directed to a method which depends from claim 1 which is dependent from claim 1 which is an apparatus. Claim 40 has been amended to depend from claim 43 which is a method claim. Withdrawal of the rejection is respectfully requested.

Claims 1-11, 24-33 and 40-58 are rejected under 35 U.S.C. §103(a) as being unpatentable over European Patent No. 0814025 to Westerman (hereinafter “Westerman”) in view of U.S. Patent No. 6,003,759 to Kenner et al. (hereinafter “Kenner”). In view of the amendments and arguments presented herewith, this determination is respectfully traversed.

Independent claims 1 and 43 have been amended to more clearly define the present invention. The method and apparatus of the present invention includes end flaps which include a curved transverse edge of which each flap is foldably connected to a respective main panel.

Westerman discloses a blank including main surfaces, an auxillary surface 7 and a folding edge A between main surface 3, 5 and surfaces 10, 11 and 12. In contrast, the presently claimed invention includes a curved transverse edge of which the flaps are connected to the main panels. However, Westerman’s folding edge A is linear with a hexagon and two tabs extending

therefrom as shown in Figures 1 and 2. Further, the Examiner acknowledges that Westerman fails to teach or suggest end tabs connected to end panels.

The Examiner cites the disclosure of Kenner for the teaching of an end tab. However, Kenner fails to teach or suggest end flaps at all. Thus, Kenner fails to overcome the deficiencies of Westerman. Accordingly, Westerman and/or Kenner fail to teach or suggest the presently claimed invention.

Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over Westerman in view of Kenner and further in view of U.S. Patent No. 6,513,704 to Perot (hereinafter "Perot"). In view of the amendments and arguments presented herewith, this determination is respectfully traversed.

The above-argument equally applies herein as claim 12 depends from claim 1. Specifically, Westerman and Kenner fail to teach or suggest a curved transverse edge of which the flaps are connected to the main panels. Further, the Examiner acknowledges that Westerman and Kenner fail to teach or suggest a sheet material comprising cardboard.

The Examiner cites the disclosure of Perot as allegedly teaching a sheet material comprising cardboard. Perot discloses a packaging box for bottles including two body panels

2,3, intermediate sections 12,13 and bottom panels 14,15. However, Perot does not disclose either end of a pair of main panels foldably connected to a curved traverse edge of the end flaps. Therefore, Perot fails to overcome the deficiencies of Westerman and Kenner. Thus, Westerman, Kenner and Perot fail to teach or suggest the presently claimed invention.

Claim 13-15 and 19-23 is rejected under 35 U.S.C. §103(a) as being unpatentable over Westerman in view of Kenner and further in view of U.S. Patent No. 3,094,265 to Hovland (hereinafter "Hovland"). In view of the amendments and arguments presented herewith, this determination is respectfully traversed.

The above-argument equally applies herein as claims 13-15 and 19-23 depend from claim 1. Specifically, Westerman and Kenner fail to teach or suggest a curved transverse edge of which the flaps are connected to the main panels. Further, the Examiner acknowledges that Westerman and Kenner fail to teach or suggest a sheet material comprising a plastic.

The Examiner cites the disclosure of Hovland as allegedly teaching a sheet material comprising plastic. Hovland teaches a corner sealed leak proof container including walls 11-13, and top/bottom closures 15-18. All foldable edges are linear and all walls are quadrilaterals. Hovland fails to teach or suggest curved transverse edges, as recited in the claims. Therefore,

Applicant: Robert Lindsay
Serial No.: 10/578,694
Docket No.: 1421-171 PCT/US
Page 23

Hovland fails to overcome the deficiencies of Westerman and Kenner. Thus, Westerman, Kenner and Hovland fail to teach or suggest the presently claimed invention.

Claims 34-37 are rejected under 35 U.S.C. §103(a) as being unpatentable over Westerman in view of Kenner and further in view of U.S. Patent No. 6,019,276 to Auclair (hereinafter "Auclair"). In view of the amendments and arguments presented herewith, this determination is respectfully traversed.

The above-argument equally applies herein as claims 34-37 depend from claim 1. Specifically, Westerman and Kenner fail to teach or suggest a curved transverse edge of which the flaps are connected to the main panels. Further, the Examiner acknowledges that Westerman and Kenner fail to teach or suggest a tear strip.

The Examiner cites the disclosure of Auclair as allegedly teaching a tear line. Auclair discloses a carton including base panels interconnected by side panels. Auclair does not disclose main panels folably connected at either end to curved transverse edges, as recited in the claims. Therefore, Auclair fails to overcome the deficiencies of Westerman and Kenner. Thus, Westerman, Kenner and Auclair fail to teach or suggest the presently claimed invention.

Applicant: Robert Lindsay
Serial No.: 10/578,694
Docket No.: 1421-171 PCT/US
Page 24

As the claims of the present invention recite a structural feature not found in the cited references, the claims of the present invention as submitted herewith, are believed to be patentably distinct Westerman, Kenner, Perot, Hovland, and/or Auclair. Accordingly, it is respectfully submitted that independent claims 1 and 43, and depending claims therefrom, of the present invention define patentably over the combination of Westerman, Kenner, Perot, Hovland, and/or Auclair.

Having responded in full the present Office Action, it is respectfully submitted that the application is therefore in condition for allowance. Favorable action thereon is respectfully solicited.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Applicant: Robert Lindsay
Serial No.: 10/578,694
Docket No.: 1421-171 PCT/US
Page 25

Should the Examiner have any questions regarding this response, the undersigned would be pleased to address them by telephone.

Respectfully submitted,



Anna Lisa L. Gallo
Registration No.: 50,279
Attorney for Applicant(s)

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset 13421, New York 11791
(973) 331-1700